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11

12 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

<p>13 Chris Walik</p> <p>14 Plaintiff,</p> <p>15 v.</p> <p>16 Midland Funding, LLC, Legal</p> <p>17 Recovery Law Offices, Inc. and</p> <p>18 Mark D. Walsh</p>	<p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>Case No: <u>'11CV0827 AJB NLS</u></p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

1. Chris Walik, (Plaintiff), through Plaintiff's attorneys, brings this action to challenge the actions of Midland Funding, LLC ("Midland"), Legal Recovery Law Offices, Inc. ("LRL") and Mark D. Walsh, ("Walsh") or collectively referred to as ("Defendants"), with regard to attempts by Defendants to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

2. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.
3. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.
4. Unless otherwise stated, all the conduct engaged in by Defendants took place in California.
5. Any violations by Defendants were knowing, willful, and intentional, and Defendants did not maintain procedures reasonably adapted to avoid any such violation.

JURISDICTION AND VENUE

6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
7. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").
8. Because Defendants do business within the State of California, personal jurisdiction is established.
9. Venue is proper pursuant to 28 U.S.C. § 1391.
10. At all times relevant, Defendants conducted business within the State of California.

PARTIES

11. Plaintiff is a natural person who resides in the City of San Diego, State of California.
12. Defendants are located in the City of San Diego, in the State of California.
13. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

- 1 14. Defendants are persons who use an instrumentality of interstate commerce or
- 2 the mails in a business the principal purpose of which is the collection of
- 3 debts, or who regularly collect or attempt to collect, directly or indirectly,
- 4 debts owed or due or asserted to be owed or due another and are therefore
- 5 debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
- 6 15. Plaintiff is a natural person from whom a debt collector sought to collect a
- 7 consumer debt which was due and owing or alleged to be due and owing from
- 8 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
- 9 1788.2(h).
- 10 16. Defendants, in the ordinary course of business, regularly, on behalf of
- 11 themselves, or others, engage in debt collection as that term is defined by
- 12 California Civil Code § 1788.2(b), are therefore debt collectors as that term is
- 13 defined by California Civil Code § 1788.2(c).
- 14 17. This case involves money, property or their equivalent, due or owing or
- 15 alleged to be due or owing from a natural person by reason of a consumer
- 16 credit transaction. As such, this action arises out of a consumer debt and
- 17 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

18 **FACTUAL ALLEGATIONS**

- 19 18. Sometime before February 2, 2011, Plaintiff is alleged to have incurred
- 20 certain financial obligations to Aspire Visa.
- 21 19. These financial obligations were primarily for personal, family or household
- 22 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
- 23 §1692a(5).
- 24 20. These alleged obligations were money, property, or their equivalent, which is
- 25 due or owing, or alleged to be due or owing, from a natural person to another
- 26 person and are therefore a “debt” as that term is defined by California Civil
- 27 Code §1788.2(d), and a “consumer debt” as that term is defined by California
- 28 Civil Code §1788.2(f).

1 21. Sometime thereafter, but before February 2, 2011, Plaintiff allegedly fell
2 behind in the payments allegedly owed on the alleged debt. Plaintiff currently
3 takes no position as to the validity of this alleged debt.

4 22. Subsequently, but before February 2, 2011, the alleged debt was assigned,
5 placed, or otherwise transferred, to Defendants for collection.

6 23. On or about February 2, 2011, Defendants filed a lawsuit against Plaintiff in
7 the Superior Court, County of Sacramento and subsequently served Plaintiff
8 with the Summons and Complaint.

9 24. Plaintiff did not reside in Sacramento County at the time the State lawsuit was
10 filed and did not enter into the alleged contract with any Defendant and/or
11 Aspire Visa while residing in the County of Sacramento.

12 25. Defendants brought the State court legal action against Plaintiff, unrelated to
13 real property, in a judicial district or similar legal entity that is outside of
14 where Plaintiff allegedly signed the contract sued upon and is outside the
15 judicial district or similar legal entity where Plaintiff resided at the
16 commencement of the action. This conduct by Defendant violated 15 U.S.C. §
17 1692i.

18 26. Because this violated certain portions of the federal Fair Debt Collection
19 Practices Act as these portions are incorporated by reference in the Rosenthal
20 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
21 this conduct or omission violated Cal. Civ. Code § 1788.17.

22 27. As a result Defendants illegal conduct, Plaintiff has incurred damages,
23 including being forced to defend a baseless action in a County in which he
24 does not reside.

25 //

26 //

27 //

28 //

CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

(AGAINST ALL DEFENDANTS)

28. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
29. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
30. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every defendant, jointly and severally.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

(AGAINST ALL DEFENDANTS EXCEPT DEFENDANT WALSH)

31. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
32. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32
33. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's

1 fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every
2 defendant, jointly and severally.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays that judgment be entered against Defendants, and
5 Plaintiff be awarded damages from each Defendant, as follows:

6 • An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
7 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
8 1692k(a)(2)(A);
9 • An award of costs of litigation and reasonable attorney's fees, pursuant
10 to 15 U.S.C. § 1692k(a)(3);
11 • An award of actual damages pursuant to California Civil Code §
12 1788.30(a) from all Defendants, except Walsh;
13 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
14 § 1788.30(b) from all Defendants, except Walsh;
15 • An award of costs of litigation and reasonable attorney's fees, pursuant
16 to Cal. Civ. Code § 1788.30(c) from all Defendants, except Walsh.

17 34. Pursuant to the seventh amendment to the Constitution of the United States of
18 America, Plaintiff is entitled to, and demands, a trial by jury.
19

20 Respectfully submitted,

21 **Hyde & Swigart**

22 Date: April 18, 2011

23 By: /s Robert L. Hyde

24 Robert L. Hyde
Attorneys for Plaintiff

HYDE & SWIGART
San Diego, California

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Chris Walik

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)**DEFENDANTS**Midland Funding, LLC, Legal Recovery Law Offices, Inc. and
Mark D. WalshCounty of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'11CV0827 AJB NLS

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108
619.233.7770**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only) 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF
<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/>	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 12 USC 3410
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General Habeas Corpus:	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/>	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/>
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/>	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	FEDERAL TAX SUITS
			<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/>
			<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/>	<input type="checkbox"/> 891 Agricultural Acts
			<input type="checkbox"/>	<input type="checkbox"/> 892 Economic Stabilization Act
			<input type="checkbox"/>	<input type="checkbox"/> 893 Environmental Matters
			<input type="checkbox"/>	<input type="checkbox"/> 894 Energy Allocation Act
			<input type="checkbox"/>	<input type="checkbox"/> 895 Freedom of Information Act
			<input type="checkbox"/>	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
			<input type="checkbox"/>	<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §1692 et seq. (FDCPA)Brief description of cause:
Unfair Debt Collection Practices**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

75,001.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/19/2011

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.